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Supreme Court of the United States

OCTOBER TERM, 1956.

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit.**

**PETITION OF THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO FOR REHEARING.**

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Company and Allen L.
Lobrano, Respondents.**

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THE LETTER MINERALS, INC.,

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**PETITION OF THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO FOR REHEARING.**

The California Company and Allen L. Lobrano respectfully petition the Court to eliminate its modification whereby further proceedings in the United States Courts have been deferred pending a declaratory judgment, if obtainable, by the Supreme Court of Louisiana as to whether Act 315 of 1940 purports to strike down the fixed term provision of mineral reservations against the United States in antecedent United States contracts. The following grounds are relied upon:

1. Louisiana Act 315 of 1940 is directed against the United States of America and affects none other. Any

proceeding in the State Court to interpret this statute "with finality" would therefore be a suit to which the United States is an indispensable party and one over which the State Court cannot have jurisdiction. The Louisiana Supreme Court has, in *Whitney National Bank of New Orleans vs. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693, already declined to consider the constitutionality of Act 315 of 1940 for the reason that:

"... the United States is the only party which has an interest in urging the unconstitutionality of the statute, and the judgment wherein the lower court found the statute to be applicable and constitutional and provided that nothing therein was to be construed as *res judicata* as against the United States, was improper without the government being a party hereto," 212 La. at pp. 963, 964, 33 So. (2d) at p. 698.

2. Since the pending suit in Plaquemines Parish to adjudicate the title of the United States is held to be a suit against the United States, the suggested declaratory judgment proceeding in the State Court, which is a step in the determination process, cannot be any the less a suit against the United States.

3. The interpretation sought of the Louisiana Supreme Court is whether Act 315 of 1940 is intended to apply "when the parties themselves have contracted for a reservation of specific duration". The relevancy and constitutionality of the Louisiana Supreme Court's interpretation are necessarily reserved by this Court for ultimate determination in the Federal Courts. There is grave doubt that the power exists to render such an advisory opinion.

4. Interpretation of Act 315 of 1940 by the Louisiana Supreme Court cannot affect the outcome of the litigation in the United States Courts. If the United States is correct in its argument that the statute does not apply to a mineral reservation with a specific termination date, petitioner has no claim to the property. If, on the other hand, the Louisiana Supreme Court were to adopt petitioner's argument that the statute did purport to strike down and write out the April 1st, 1945 expiration date, petitioner could not be aided by such an arbitrary attempt to divest previously existing property rights of the United States. Whichever be the interpretation, the status of the title of the United States would be unaffected. Clearing of the title of the United States to this important property ought not to be deferred by an unavailing step.

WHEREFORE, The California Company and Allen L. Lobrano pray that this Court eliminate its modification of the judgment of the Court of Appeals and that the judgment of the Court of Appeals be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that the foregoing petition for rehearing is presented in good faith and not for delay.

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